

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WILLIAM A. GROSS CONSTRUCTION
ASSOCIATES, INC.,

Plaintiff,

07-cv-10639 (LAK) (AJP)

**ANSWER OF CNA
SURETY CORPORATION
D/B/A AMERICAN
CASUALTY COMPANY
OF READING, PA TO
THE FIFTH PARTY
COMPLAINT WITH
AFFIRMATIVE
DEFENSES AND CROSS-
CLAIMS**

-against-

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Defendant.

-----X
AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

CAULDWELL WINGATE COMPANY, LLC,

Third-Party Defendant.

-----X
CAULDWELL WINGATE COMPANY, LLC,

Fourth-Party Plaintiff,

-against-

DORMITORY AUTHORITY OF THE
STATE OF NEW YORK,

Fourth-Party Defendant.

-----X

Caption continued on next page

-----X
DORMITORY AUTHORITY OF THE
STATE OF NEW YORK,

Fifth-Party Plaintiff,

-against-

A. WILLIAMS TRUCKING & BACKHOE
TRENCHING, INC., ASPRO MECHANICAL
CONTRACTORS, INC., BEAUBOIS CANADA,
INC., BOVIS LEND LEASE LMB, INC., CNA
SURETY CORPORATION D/B/A AMERICAN
CASUALTY COMPANY OF READING, PA,
DIERKS HEATING COMPANY, INC. ENCLOS
CORPORATION, FIVE STAR ELECTRIC
CORPORATION, FUTURE TECH CONSULTANTS
OF NEW YORK, INC., HERITAGE AIR SYSTEMS,
INC., HUGH O'KANE ELECTRIC CO., LLC,
MATERIALS TESTING LAB, INC., PYRAMID
FIRE PROTECTION, INC., RAFAEL VINOLY
ARCHITECTS P.C., SMI-OWEN STEEL COMPANY,
INC., STONEWALL CONTRACTING
CORPORATION, TRACTEL LTD. SWINGSTAGE
DIVISION,

Fifth-Party Defendants.

-----X

Fifth Party Defendant, CNA Surety Corporation d/b/a American Casualty
Company of Reading, PA (hereinafter referred to as "CNA"), by and through its
attorneys, Winget, Spadafora & Schwartzberg, LLP, as and for its Answer to the Fifth-
Party Complaint (the "Complaint") with Affirmative Defenses and Cross-Claims hereby
alleges as follows:

AS AND FOR AN ANSWER TO "NATURE OF ACTION"

1. CNA denies the allegations contained in paragraph "1" as they pertain to
CNA, and denies having knowledge or information sufficient to form a belief as to the

truth of the allegations as they pertain to the remainder of the fifth-party defendants and DASNY.

2. CNA denies the allegations contained in paragraph “2” of the Complaint as they pertain to CNA, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to the remaining fifth-party defendants, and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO “JURISDICTION AND VENUE”

3. CNA denies the allegations contained in paragraph “3” of the Complaint and refers all questions of law to the Court.

4. CNA denies the allegations contained in paragraph “4” of the Complaint and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO “PARTIES”

5. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “5” of the Complaint and refers all questions of law to the Court.

6. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint.

7. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Complaint.

8. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Complaint.

9. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Complaint.

10. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Complaint.

11. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Complaint.

12. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint.

13. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Complaint.

14. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Complaint.

15. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Complaint.

16. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Complaint.

17. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of the Complaint.

18. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the Complaint.

19. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Complaint.

20. CAN denies the allegations contained in paragraph “20” of the Complaint and refers all questions of law to the Court.

21. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Complaint.

22. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Complaint.

AS AND FOR AN ANSWER TO “FACTUAL ALLEGATIONS”; “The Genesis of the Project”

23. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the Complaint.

24. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “24” of the Complaint.

25. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “25” of the Complaint.

26. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “26” of the Complaint.

27. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “27” of the Complaint.

28. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Complaint.

AS AND FOR AN ANSWER TO “The Project Contracts and Problems Encountered During the Project”

29. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “29” of the Complaint.

AS AND FOR AN ANSWER TO “The Project Design”

30. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “30” of the Complaint.

31. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the Complaint.

32. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the Complaint.

33. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “33” of the Complaint.

34. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “34” of the Complaint.

35. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “35” of the Complaint.

AS AND FOR AN ANSWER TO “Construction Management”

36. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “36” of the Complaint.

37. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “37” of the Complaint.

38. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “38” of the Complaint.

39. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “39” of the Complaint.

40. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “40” of the Complaint.

41. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “41” of the Complaint.

AS AND FOR AN ANSWER TO “Excavation and Foundation Work”

42. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “42” of the Complaint.

43. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “43” of the Complaint.

44. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “44” of the Complaint.

45. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Complaint.

46. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Complaint.

AS AND FOR AN ANSWER TO “Structural Steel Work”

47. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “47” of the Complaint, and respectfully refers the Court to the “SMI-Owen Contract” referenced in the Complaint for its language, intent and legal meaning.

48. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “48” of the Complaint.

49. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “49” of the Complaint.

50. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “50” of the Complaint.

51. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “51” of the Complaint.

52. CNA denies the allegations contained in paragraph “52” of the Complaint, except admits that CNA issued a performance bond and refers the Court to same for its language, intent and legal meaning.

53. CNA denies the allegations contained in paragraph “53” of the Complaint, except admits that the Complaint references a letter by SMI-Owen dated December 10, 2003, and respectfully refers the Court to the letter for its language, intent and legal meaning. In further response, CNA denies having knowledge or information sufficient to form a belief as to the remaining allegations in paragraph “53” of the Complaint.

54. CNA denies the allegations contained in paragraph “54” of the Complaint, except admits that the Complaint references a letter by CNA dated January 9, 2004, and respectfully refers the Court to same for its language, intent and legal meaning.

55. CNA denies the allegations contained in paragraph “55” of the Complaint, except admits that the Complaint references a “Takeover Agreement” entered into between DASNY and CNA, and respectfully refers the Court to the “Takeover Agreement” for its language, intent and legal meaning.

56. CNA denies the allegations contained in paragraph “56” of the Complaint, except admits that the Complaint references a “Takeover Agreement” entered into

between DASNY and CNA, and respectfully refers the Court to the “Takeover Agreement” for its language, intent and legal meaning.

57. CNA denies the allegations contained in paragraph “57” of the Complaint, except admits that the Complaint references an agreement between CNA and A.J. McNulty & Company, Inc., and respectfully refers the Court to same for its language, intent and legal meaning.

58. CNA denies the allegations contained in paragraph “58” of the Complaint.

59. CNA denies the allegations contained in paragraph “59” of the Complaint.

60. CNA denies the allegations contained in paragraph “60” of the Complaint and respectfully refers all questions of law to the Court.

AS AND FOR AN ANSWER TO “Exterior Work”

61. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “61” of the Complaint.

62. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “62” of the Complaint.

AS AND FOR AN ANSWER TO “General Contract Work”

63. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “63” of the Complaint.

64. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “64” of the Complaint.

65. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “65” of the Complaint.

66. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “66” of the Complaint.

AS AND FOR AN ANSWER TO “Heating, Ventilation and Air Conditioning (“HVAC”)”

67. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “67” of the Complaint.

68. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “68” of the Complaint.

69. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “69” of the Complaint.

70. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “70” of the Complaint.

AS AND FOR AN ANSWER TO “Sheet Metal Work”

71. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “71” of the Complaint.

72. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “72” of the Complaint.

73. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “73” of the Complaint.

74. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “74” of the Complaint.

AS AND FOR AN ANSWER TO “Plumbing”

75. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “75” of the Complaint.

76. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “76” of the Complaint.

77. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “77” of the Complaint.

AS AND FOR AN ANSWER TO “Fire Protection”

78. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “78” of the Complaint.

79. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “79” of the Complaint.

AS AND FOR AN ANSWER TO “Building Power and Fire Alarm Systems”

80. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “80” of the Complaint.

81. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “81” of the Complaint.

82. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “82” of the Complaint.

AS AND FOR AN ANSWER TO “Low Voltage Electrical Work”

83. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “83” of the Complaint.

84. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “84” of the Complaint.

AS AND FOR AN ANSWER TO “Millwork”

85. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “85” of the Complaint.

86. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “86” of the Complaint.

87. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “87” of the Complaint.

AS AND FOR AN ANSWER TO “Façade Maintenance”

88. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “88” of the Complaint.

89. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “89” of the Complaint.

AS AND FOR AN ANSWER TO “Testing”

90. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “90” of the Complaint.

91. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “91” of the Complaint.

92. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “92” of the Complaint.

93. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “93” of the Complaint.

94. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “94” of the Complaint.

AS AND FOR AN ANSWER TO “FIRST CLAIM FOR RELIEF: DEFENDANT WILLIAMS”

95. CNA repeats and realleges its responses to paragraphs “1” through “94” of the Complaint as if set forth at length herein.

96. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “96” of the Complaint.

97. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “97” of the Complaint.

98. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “98” of the Complaint.

99. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “99” of the Complaint.

100. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “100” of the Complaint.

AS AND FOR AN ANSWER TO “SECOND CLAIM FOR RELIEF: DEFENDANT WILLIAMS”

101. CNA repeats and realleges its responses to paragraphs “1” through “100” of the Complaint as if set forth at length herein.

102. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “102” of the Complaint.

103. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “103” of the Complaint.

104. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “104” of the Complaint.

105. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "105" of the Complaint.

AS AND FOR AN ANSWER TO "THIRD CLAIM FOR RELIEF: DEFENDANT WILLIAMS"

106. CNA repeats and realleges its responses to paragraphs "1" through "105" of the Complaint as if set forth at length herein.

107. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "107" of the Complaint.

AS AND FOR AN ANSWER TO "FOURTH CLAIM FOR RELIEF: DEFENDANT ASPRO"

108. CNA repeats and realleges its responses to paragraphs "1" through "107" of the Complaint as if set forth at length herein.

109. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "109" of the Complaint.

110. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "110" of the Complaint.

111. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "111" of the Complaint.

112. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "112" of the Complaint.

113. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "113" of the Complaint.

114. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "114" of the Complaint.

AS AND FOR AN ANSWER TO “FIFTH CLAIM FOR RELIEF: DEFENDANT ASPRO”

115. CNA repeats and realleges its responses to paragraphs “1” through “114” of the Complaint as if set forth at length herein.

116. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “116” of the Complaint.

117. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “117” of the Complaint.

118. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “118” of the Complaint.

119. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “119” of the Complaint.

AS AND FOR AN ANSWER TO “SIXTH CLAIM FOR RELIEF: DEFENDANT ASPRO”

120. CNA repeats and realleges its responses to paragraphs “1” through “119” of the Complaint as if set forth at length herein.

121. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “121” of the Complaint.

AS AND FOR AN ANSWER TO “SEVENTH CLAIM FOR RELIEF: DEFENDANT BEAUBOIS”

122. CNA repeats and realleges its responses to paragraphs “1” through “121” of the Complaint as if set forth at length herein.

123. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “123” of the Complaint.

124. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “124” of the Complaint.

125. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “125” of the Complaint.

126. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “126” of the Complaint.

127. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “127” of the Complaint.

128. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “128” of the Complaint.

**AS AND FOR AN ANSWER TO “EIGHTH CLAIM FOR RELIEF: DEFENDANT
BEAUBOIS”**

129. CNA repeats and realleges its responses to paragraphs “1” through “128” of the Complaint as if set forth at length herein.

130. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “130” of the Complaint.

131. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “131” of the Complaint.

132. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “132” of the Complaint.

133. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “133” of the Complaint.

**AS AND FOR AN ANSWER TO “NINTH CLAIM FOR RELIEF: DEFENDANT
BEAUBOIS”**

134. CNA repeats and realleges its responses to paragraphs “1” through “133” of the Complaint as if set forth at length herein.

135. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “135” of the Complaint.

**AS AND FOR AN ANSWER TO “TENTH CLAIM FOR RELIEF: DEFENDANT
DIERKS”**

136. CNA repeats and realleges its responses to paragraphs “1” through “135” of the Complaint as if set forth at length herein.

137. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “137” of the Complaint.

138. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “138” of the Complaint.

139. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “139” of the Complaint.

140. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “140” of the Complaint.

141. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “141” of the Complaint.

**AS AND FOR AN ANSWER TO “ELEVENTH CLAIM FOR RELIEF:
DEFENDANT DIERKS”**

142. CNA repeats and realleges its responses to paragraphs “1” through “141” of the Complaint as if set forth at length herein.

143. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “143” of the Complaint.

144. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “144” of the Complaint.

145. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “145” of the Complaint.

146. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “146” of the Complaint.

**AS AND FOR AN ANSWER TO “TWELFTH CLAIM FOR RELIEF:
DEFENDANT DIERKS”**

147. CNA repeats and realleges its responses to paragraphs “1” through “146” of the Complaint as if set forth at length herein.

148. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “148” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTEENTH CLAIM FOR RELIEF:
DEFENDANT ENCLOS”**

149. CNA repeats and realleges its responses to paragraphs “1” through “148” of the Complaint as if set forth at length herein.

150. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “150” of the Complaint.

151. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “151” of the Complaint.

152. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “152” of the Complaint.

153. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “153” of the Complaint.

154. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “154” of the Complaint.

**AS AND FOR AN ANSWER TO “FOURTEENTH CLAIM FOR RELIEF:
DEFENDANT ENCLOS”**

155. CNA repeats and realleges its responses to paragraphs “1” through “154” of the Complaint as if set forth at length herein.

156. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “156” of the Complaint.

**AS AND FOR AN ANSWER TO “FIFTEENTH CLAIM FOR RELIEF:
DEFENDANT FIVE STAR”**

157. CNA repeats and realleges its responses to paragraphs “1” through “156” of the Complaint as if set forth at length herein.

158. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “158” of the Complaint.

159. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “159” of the Complaint.

160. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “160” of the Complaint.

161. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “161” of the Complaint.

162. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “162” of the Complaint.

**AS AND FOR AN ANSWER TO “SIXTEENTH CLAIM FOR RELIEF:
DEFENDANT FIVE STAR”**

163. CNA repeats and realleges its responses to paragraphs “1” through “162” of the Complaint as if set forth at length herein.

164. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “164” of the Complaint.

165. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “165” of the Complaint.

166. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “166” of the Complaint.

167. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “167” of the Complaint.

**AS AND FOR AN ANSWER TO “SEVENTEENTH CLAIM FOR RELIEF:
DEFENDANT FIVE STAR”**

168. CNA repeats and realleges its responses to paragraphs “1” through “167” of the Complaint as if set forth at length herein.

169. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “169” of the Complaint.

**AS AND FOR AN ANSWER TO “EIGHTEENTH CLAIM FOR RELIEF:
DEFENDANT HERITAGE”**

170. CNA repeats and realleges its responses to paragraphs “1” through “169” of the Complaint as if set forth at length herein.

171. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “171” of the Complaint.

172. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “172” of the Complaint.

173. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “173” of the Complaint.

174. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “174” of the Complaint.

175. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “175” of the Complaint.

**AS AND FOR AN ANSWER TO “NINETEENTH CLAIM FOR RELIEF:
DEFENDANT HERITAGE”**

176. CNA repeats and realleges its responses to paragraphs “1” through “175” of the Complaint as if set forth at length herein.

177. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “177” of the Complaint.

178. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “178” of the Complaint.

179. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “179” of the Complaint.

180. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “180” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTIETH CLAIM FOR RELIEF:
DEFENDANT HERITAGE”**

181. CNA repeats and realleges its responses to paragraphs “1” through “180” of the Complaint as if set forth at length herein.

182. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “182” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTY-FIRST CLAIM FOR RELIEF:
DEFENDANT O’KANE”**

183. CNA repeats and realleges its responses to paragraphs “1” through “182” of the Complaint as if set forth at length herein.

184. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “184” of the Complaint.

185. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “185” of the Complaint.

186. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “186” of the Complaint.

187. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “187” of the Complaint.

188. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “182” of the Complaint.

**AS AND FOR A “TWENTY-SECOND CLAIM FOR RELIEF: DEFENDANT
O’KANE”**

189. CNA repeats and realleges its responses to paragraphs “1” through “188” of the Complaint as if set forth at length herein.

190. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “190” of the Complaint.

191. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “191” of the Complaint.

192. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “192” of the Complaint.

193. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “193” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTY-THIRD CLAIM FOR RELIEF:
DEFENDANT O’KANE”**

194. CNA repeats and realleges its responses to paragraphs “1” through “193” of the Complaint as if set forth at length herein.

195. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “195” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTY-FOURTH CLAIM FOR RELIEF:
DEFENDANT PYRAMID”**

196. CNA repeats and realleges its responses to paragraphs “1” through “195” of the Complaint as if set forth at length herein.

197. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “197” of the Complaint.

198. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “198” of the Complaint.

199. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “199” of the Complaint.

200. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “200” of the Complaint.

201. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “201” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTY-FIFTH CLAIM FOR RELIEF:
DEFENDANT PYRAMID”**

202. CNA repeats and realleges its responses to paragraphs “1” through “201” of the Complaint as if set forth at length herein.

203. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “203” of the Complaint.

204. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “204” of the Complaint.

205. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “205” of the Complaint.

206. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “206” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTY-SIXTH CLAIM FOR RELIEF:
DEFENDANT PYRAMID”**

207. CNA repeats and realleges its responses to paragraphs “1” through “206” of the Complaint as if set forth at length herein.

208. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “208” of the Complaint.

**AS AND FOR AN ANSWER TO “TWENTY-SEVENTH CLAIM FOR RELIEF:
DEFENDANT SMI-OWEN”**

209. CNA repeats and realleges its responses to paragraphs “1” through “208” of the Complaint as if set forth at length herein.

210. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “210” of the Complaint.

211. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “211” of the Complaint.

212. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “212” of the Complaint.

213. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “213” of the Complaint, and respectfully refers all questions of law to the Court.

214. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “214” of the Complaint, and respectfully refers all questions of law to the Court.

215. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “215” of the Complaint, and respectfully refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “TWENTY-EIGHTH CLAIM FOR RELIEF:
DEFENDANT SMI-OWEN”**

216. CNA repeats and realleges its responses to paragraphs “1” through “215” of the Complaint as if set forth at length herein.

217. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “217” of the Complaint.

218. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “218” of the Complaint.

219. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “219” of the Complaint.

220. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “220” of the Complaint, and respectfully refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “TWENTY-NINTH CLAIM FOR RELIEF:
DEFENDANT SMI-OWEN”**

221. CNA repeats and realleges its responses to paragraphs “1” through “220” of the Complaint as if set forth at length herein.

222. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “222” of the Complaint, and respectfully refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “THIRTIETH CLAIM FOR RELIEF:
DEFENDANT CNA”**

223. CNA repeats and realleges its responses to paragraphs “1” through “222” of the Complaint as if set forth at length herein.

224. CNA denies the allegations contained in paragraph “224” of the Complaint, except admits that the Complaint references a “Takeover Agreement”, and respectfully refers the Court to that document for its language, intent and legal meaning.

225. CNA denies the allegations contained in paragraph “225” of the Complaint and respectfully refers all questions of law to the Court.

226. CNA denies the allegations contained in paragraph “226” of the Complaint.

227. CNA denies the allegations contained in paragraph “227” of the Complaint and respectfully refers all questions of law to the Court.

228. CNA denies the allegations contained in paragraph “228” of the Complaint and respectfully refers all questions of law to the Court.

229. CNA denies the allegations contained in paragraph “229” of the Complaint and respectfully refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “THIRTY-FIRST CLAIM FOR RELIEF:
DEFENDANT CNA”**

230. CNA repeats and realleges its responses to paragraphs “1” through “229” of the Complaint as if set forth at length herein.

231. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “231” of the Complaint, except admits that the Complaint references a SMI-Owen Contract, and refers the Court to that document for its language, intent and legal meaning.

232. CNA denies the allegations contained in paragraph “232” of the Complaint and respectfully refers all questions of law to the Court.

233. CNA denies the allegations contained in paragraph “233” of the Complaint and respectfully refers all questions of law to the Court.

234. CNA denies the allegations contained in paragraph “234” of the Complaint and respectfully refers all questions of law to the Court.

**AS AND FOR A “THIRTY-SECOND CLAIM FOR RELIEF: DEFENDANT
CNA”**

235. CNA repeats and realleges its responses to paragraphs “1” through “234” of the Complaint as if set forth at length herein.

236. CNA denies the allegations contained in paragraph “236” of the Complaint and respectfully refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “THIRTY-THIRD CLAIM FOR RELIEF:
DEFENDANT STONEWALL”**

237. CNA repeats and realleges its responses to paragraphs “1” through “236” of the Complaint as if set forth at length herein.

238. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “238” of the Complaint.

239. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “239” of the Complaint.

240. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “240” of the Complaint.

241. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “241” of the Complaint.

242. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “242” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTY-FOURTH CLAIM FOR RELIEF:
DEFENDANT STONEWALL”**

243. CNA repeats and realleges its responses to paragraphs “1” through “242” of the Complaint as if set forth at length herein.

244. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “244” of the Complaint.

245. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “245” of the Complaint.

246. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “246” of the Complaint.

247. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “247” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTY-FIFTH CLAIM FOR RELIEF:
DEFENDANT STONEWALL”**

248. CNA repeats and realleges its responses to paragraphs “1” through “247” of the Complaint as if set forth at length herein.

249. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “249” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTY-SIXTH CLAIM FOR RELIEF:
DEFENDANT TRACTEL”**

250. CNA repeats and realleges its responses to paragraphs “1” through “249” of the Complaint as if set forth at length herein.

251. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “251” of the Complaint.

252. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “252” of the Complaint.

253. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “253” of the Complaint.

254. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “254” of the Complaint.

255. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “255” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTY-SEVENTH CLAIM FOR RELIEF:
DEFENDANT TRACTEL”**

256. CNA repeats and realleges its responses to paragraphs “1” through “255” of the Complaint as if set forth at length herein.

257. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “257” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTY-EIGHTH CLAIM FOR RELIEF:
DEFENDANT RVA”**

258. CNA repeats and realleges its responses to paragraphs “1” through “257” of the Complaint as if set forth at length herein.

259. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “259” of the Complaint.

260. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “260” of the Complaint.

261. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “261” of the Complaint.

262. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “262” of the Complaint.

263. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “263” of the Complaint.

**AS AND FOR AN ANSWER TO “THIRTY-NINTH CLAIM FOR RELIEF:
DEFENDANT RVA”**

264. CNA repeats and realleges its responses to paragraphs “1” through “263” of the Complaint as if set forth at length herein.

265. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “265” of the Complaint.

266. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “266” of the Complaint.

267. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “267” of the Complaint.

**AS AND FOR AN ANSWER TO “FORTIETH CLAIM FOR RELIEF:
DEFENDANT RVA”**

268. CNA repeats and realleges its responses to paragraphs “1” through “267” of the Complaint as if set forth at length herein.

269. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “269” of the Complaint.

**AS AND FOR AN ANSWER TO “FORTY-FIRST CLAIM FOR RELIEF:
DEFENDANT BOVIS”**

270. CNA repeats and realleges its responses to paragraphs “1” through “269” of the Complaint as if set forth at length herein.

271. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “271” of the Complaint.

272. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “272” of the Complaint.

273. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “273” of the Complaint.

274. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “274” of the Complaint.

275. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “275” of the Complaint.

276. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “276” of the Complaint.

**AS AND FOR AN ANSWER TO “FORTY-SECOND CLAIM FOR RELIEF:
DEFENDANT BOVIS”**

277. CNA repeats and realleges its responses to paragraphs “1” through “276” of the Complaint as if set forth at length herein.

278. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “278” of the Complaint.

**AS AND FOR AN ANSWER TO “FORTY-THIRD CLAIM FOR RELIEF:
DEFENDANT FUTURE TECH”**

279. CNA repeats and realleges its responses to paragraphs “1” through “278” of the Complaint as if set forth at length herein.

280. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “280” of the Complaint.

281. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “281” of the Complaint.

282. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “282” of the Complaint.

283. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “283” of the Complaint.

**AS AND FOR AN ANSWER TO “FOURTY-FOURTH CLAIM FOR RELIEF:
DEFENDANT FUTURE TECH”**

284. CNA repeats and realleges its responses to paragraphs “1” through “283” of the Complaint as if set forth at length herein.

285. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “285” of the Complaint.

**AS AND FOR AN ANSWER TO “FORTY-FIFTH CLAIM FOR RELIEF:
DEFENDANT MTL”**

286. CNA repeats and realleges its responses to paragraphs “1” through “285” of the Complaint as if set forth at length herein.

287. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “287” of the Complaint.

288. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “288” of the Complaint.

289. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “289” of the Complaint.

**AS AND FOR AN ANSWER TO “FORTY-SXITH CLAIM FOR RELIEF:
DEFENDANT MTL”**

290. CNA repeats and realleges its responses to paragraphs “1” through “289” of the Complaint as if set forth at length herein.

291. CNA denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “291” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

292. The Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

293. The Fifth-Party Plaintiff's claims are barred by the Statute of Frauds.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

294. The Fifth-Party Plaintiff's claims are time-barred and/or precluded by virtue of the expiration of the applicable Statute of Limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

295. The Fifth-Party Plaintiff's claims are barred by the equitable doctrines of equitable estoppel, laches, waiver, ratification and/or "unclean hands."

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

296. If the Fifth-Party Plaintiff sustained any damages as alleged in the Complaint, all of which are expressly denied, then such damages were caused, either in whole or in part, by its own culpable conduct, fault and/or negligence, and any recovery herein shall be diminished accordingly in whole or in part.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

297. If the Fifth-Party Plaintiff sustained any damages as alleged in the Complaint, all of which is expressly denied, then such damages were caused by its assumption of risk and are not recoverable from CNA.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

298. To the extent that the Fifth-Party Plaintiff may have sustained any damages, all of which is expressly denied by CNA, then such damages were caused, in whole or in part, by the culpable conduct, fault, assumption of risks, negligence, intentional acts and/or other wrongful conduct on the part of the Fifth-Party Plaintiff and/or other persons and/or entities over whom CNA had no control, with no act or omission on the part of the CNA contributing thereto. Therefore, any such damages are not recoverable from CNA.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

299. The damages alleged to have been suffered by the Fifth-Party Plaintiff were caused in whole or in part by the conduct of persons or entities other than CNA. Therefore, the Fifth-Party claims are barred or diminished in the proportion that such culpable conduct of other persons or entities bear to the total culpable conduct causing damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

300. To the extent that the Fifth-Party Plaintiff sustained damages, it has failed to mitigate those damages.

AS AND FOR AN TENTH AFFIRMATIVE DEFENSE

301. The Complaint should be dismissed because the Court does not have subject matter jurisdiction and/or supplemental jurisdiction over the fifth-party action.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

302. CNA reserve the right to amend this Answer by asserting defenses which future investigation reveals to be appropriate.

AS AND FOR A FIRST CROSS-CLAIM AGAINST SMI-OWEN STEEL COMPANY, INC. AND A. WILLIAMS TRUCKING & BACKHOE TRENCHING, INC. FOR INDEMNIFICATION

303. CNA repeats and realleges its above responses/allegations in paragraphs “1” through “302” as if fully set forth herein.

304. If the Fifth-Party Plaintiff sustained any injury and/or damages as alleged in the Complaint, all of which are expressly denied, then said damages were caused by SMI-Owen Steel Company, Inc. (“SMI”) and/or Williams Trucking & Backhoe Trenching, Inc. (“Williams”) with no negligence or culpable conduct on the part of CNA contributing thereto. By reason of the foregoing, CNA is entitled to common law indemnification and/or, to the extent applicable, contractual indemnification over and against SMI and/or Williams.

AS AND FOR A SECOND CROSS-CLAIM AGAINST SMI-OWEN STEEL COMPANY, INC. AND A. WILLIAMS TRUCKING & BACKHOE TRENCHING, INC. FOR CONTRIBUTION

305. CNA repeats and realleges its above responses/allegations in paragraphs “1” through “304” as if fully set forth herein.

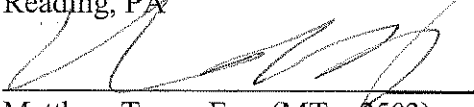
306. If the Fifth-Party Plaintiff sustained any injury and/or damages as alleged in the Complaint, all of which are expressly denied, then said damages were caused in whole or in part by SMI and/or Williams.

307. By reason of the foregoing, CNA is entitled to contribution from and to judgment over and against SMI and/or Williams in the amount of any excess paid by CNA over its respective equitable share of the judgment, if any, recovered by the Fifth-Party Plaintiff, all determined in accordance with the relative culpability of each person or entity liable.

WHEREFORE, Fifth-Party Defendant, CNA, respectfully requests that the Court dismiss the Fifth-Party Complaint in its entirety with prejudice, and award CNA costs, disbursements and attorneys' fees; in the alternative, CNA requests judgment on its cross-claims for indemnification and/or contribution against SMI-Owen Steel Company, Inc. and A. Williams Trucking & Backhoe Trenching, Inc., together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 4, 2008

WINGET, SPADAFORA &
SCHWARTZBERG, LLP.
Attorneys for Fifth-Party Defendant
CNA Surety Corporation d/b/a
American Casualty Company of
Reading, PA

By: 
Matthew Tracy, Esq. (MT – 2503)
Harris B. Katz, Esq. (HK – 1000)
45 Broadway, 19th Floor
New York, New York 10016
(212) 221-6900